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(Bio)logical Phallacies in Legal Cases of Trans Families

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Abstract

This paper delves into the political and philosophical underpinnings and legal implications of transgender pregnancy and parenthood within the European context. The European Court of Human Rights has played a pivotal role in shaping the discourse surrounding (trans) families, and in this paper, we argue that it is imperative to reverse that direction of influence, so that trans families are empowered to shape the legal discourse to become more inclusive. We refer to recent landmark judgements that have brought to the forefront the need to adapt existing conceptual and legal frameworks to the evolving landscape of family planning and parenthood for transgender individuals. We also compare the social and legal situation of trans pregnancy with surrogacy and anonymous birthing as analogies which also call for conceptual space between pregnancy and motherhood. This paper analyses case law, particularly under Article 8 of the European Convention on Human Rights, demonstrating the impact of European jurisprudence on European gender politics. We highlight the importance of reconceptualising pregnancy and parenthood away from what we describe as '(bio)logic' in the pursuit of reproductive justice for all.

Keywords

biologic, europe, trans, families, caselaw

Introduction

We live in a world where (trans) men can become pregnant and give birth to their children, and (trans) women can conceive using their sperm. They can become parents through sexual intercourse, sperm donation or assisted reproductive technologies. They can be genetically related without gestation and visa-versa. This is at odds with dominant ideologies of the family (McGlynn, 2006, p. 23) which identify the cis-heterosexual, marital family with biological offspring as the ideal structure to raise children (Margaria, 2020). It furthermore challenges the construction of parenting as a 'gendered enterprise' (Ryan, 2009, p. 141), whereby stereotypical maternal/paternal features (i.e. reproductive/productive) and roles (i.e. caregiver/breadwinner) are ascribed to people depending on their sex (female/male). These ideologies, political and philosophical in content, have penetrated the way in which European countries define and regulate parenthood with respect to who can become a mother or a father (Margaria, 2020), utilising what we describe as '(bio)logical' reasoning to support them.

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For example, until not long ago, becoming infertile was considered a price to pay for transitioning (Dunne, 2017, p. 558).[1] However, in the case of *A.P., Garçon and Nicot v. France* (2017), the European Court of Human Rights (ECtHR) held that surgical or medical procedures involving high probability of sterility as requirements for obtaining legal gender recognition are no longer acceptable under the European Convention of Human Rights (ECHR) due to breaching Article 8 of the Convention which articulates the right to respect for private and family life.[2] Thus, transgender persons can become pregnant and give birth or conceive utilising sperm for partner insemination.

In this paper, we study the ways in which trans individuals are agents of change that challenge conventional understandings of pregnancy, birth and parenthood. We look at the relevant caselaw of the ECtHR and comment upon the ECHR, in particular Article 8. We have chosen to use the Council of Europe as the frame of reference to make comparisons between European countries, since all member states are subjected to the jurisprudence of the ECtHR and have to comply with the provisions of the ECHR. In this regard, the Courts' tendency to accept only those parents and families that mimic the cis-hetero standard of 'normalcy' is observed. Moreover, we analyse particular landmark cases from, and compare the legal context between, Germany, the United Kingdom, Sweden, Belgium, France and Finland, as they provide most relevance for this particular paper. We use the tools of conceptual analysis to highlight the (bio)logic at play in these settings and argue that we must reject the method of competing rights in our pursuit of reproductive justice for trans and all peoples.

(Bio)logical Reasoning

Here we use 'logic' to describe the underlying reasoning of an argument or position and define '(bio)logic' as reasoning founded upon narrow and outdated understandings of gender that assumes it to be binary, stable and based upon specifically biological sex assigned at birth. (Bio)logic ignores the fact that gender is much more complex than 'just' being male or female (and ignores complexities within and between the categories of 'male' and 'female' themselves), and that a person's gender identity is something that they can experience and define for themselves. As such, (bio)logical reasoning doesn't consider the spectrum of identities and modalities that exist in our society. (Bio)logic prioritises biological sex assigned at birth over gender, perpetuating the false notion that sex is real and gender is not, disregarding the right to self-determination of transgender individuals. This also propagates the myth that sex/gender are fixed and binary, and denies the personal experiences and self-perception of transgender individuals. Also, referring to sex as biological is at odds with decades of queer/trans/feminist theorising which problematises the categories of male/female and their nature, but within (bio)logic such complexities are ignored. By doing so, (bio)logic both minimises and compounds the challenges that transgender individuals face.

(Bio)logic is prominent in transphobic discourse, and as we will show in this paper, in European legal theory and practice. The title of this paper refers to the '(bio)logical phallacies' in operation, by which we mean the fallacious reasoning that (bio)logic follows. When the reasoning only follows an oversimplified biology, then we consider that reasoning to be fallacious. And when that fallacious reasoning occurs in a patriarchal context, as a play-on-words, we consider it 'phallacious'.[3] The (bio) logical 'phallacies' that we are especially interested in exposing in this paper are those at the specific site of intersecting forces of oppression when it comes to trans reproduction.

A lot of damage is done by (bio)logically 'phallacious' reasoning, and we will be focussing on the significant harm[4] caused by the law's practice of misgendering when it comes to reproduction and family-making. Misgendering is intrinsically problematic, as a result of its moral contestability, in and of itself (Julia Kapusta, 2016). As such it is imperative that we embrace a framework that can accommodate the reality of pregnant trans and nonbinary people, and for this, (bio)logic (and the legal systems that follow it) fails.

Trans reproduction is often met with reproach when compared with the cisgender, heterosexual, nuclear family (the 'traditional' family, or other normative forms). This is notably seen in birth

registration where a 'traditional' family is more likely to agree with the terms provided on the birth certificate (i.e. 'mother' and 'father'). Birth certificates themselves are heteronormative and binary, not only with respect to the child's parentage but also the child's own sex, where parents or medical professionals must usually choose a sex (male or female) even if it is initially unclear (i.e. intersex). They also generally contemplate two parents, one of each sex, without accounting for other individuals who may have contributed genetically and socially to the child. Being a biological parent and a genetic parent are not the same thing (as some are one and not the other, for example, consider the gestating parent with another parent's egg), yet under (bio)logic these are conflated. Consequently, there is much to be said about the role that (bio)logic has in the foundations of birth certificates, and the role the registration process has in reflecting, re-producing, 'outing' and erasing (trans) identity and the complexities of family formations in social reality.

As we shall demonstrate, the ECtHR's insistence that trans men be termed a 'mother' and trans women be termed a 'father' on their child (ren)'s birth certificate, is a clear use of (bio)logic and a refusal to acknowledge the social reality of families outside the 'traditional' ideal. The state de facto dictates a single possible parenting structure, enforces gender norms (a pregnant person is always a mother)[5] and erases the lived reality of other possibilities (More, 1998; Wierckx et al., 2012).

This legal stance has significant implications for transgender parents and their families. The misgendering of trans parents on birth certificates stigmatises them by failing to acknowledge and respect their experienced gender identity. This perpetuates societal misconceptions about transgender individuals and contributes to their further marginalisation. Furthermore, this renders trans parents effectively invisible under the law. By refusing to recognise their gender identity and insisting on labelling them via (bio)logic according to their assigned sex at birth, the ECtHR denies them the right to be represented and protected as parents in a manner that aligns with their lived experience. This invisibility and lack of recognition and transparency can have profound psychological and social consequences for trans parents and their families, exacerbating the challenges they face and potentially undermining their ability to exercise their parental rights.

Given the prioritisation of a certain type of (bio)logical 'family', it is important to question the concept of 'naturalness' as promoted by the ECtHR through the emphasis placed on cis-heteronormative constructions of the 'family', and to reject the (bio)logic that attempts to justify it. People think (and enact) in multifaceted ways about family (Carone et al., 2021), parenthood (Gates, 2013; Pyne, 2012), and gender (Offer & Schneider, 2011; Sayer, 2005), and so the law invariably ought to take account of such differing views and practices rather than cling to what it deems to be 'traditional'. To do otherwise leaves the law out of touch with reality and unable to adequately and accurately pick out its subjects. It should go without saying that trans families ought to be acknowledged in the law, and it is worth remembering that doing so would aid all families in combating rigid norms about any 'right' way to exist and engage in family life.

In the following, we detail two instances of landmark cases of trans families to expose their (bio) logical reasoning. We then present alternative, more positive ways of recognising trans families where the benefit could be felt beyond trans families themselves, demonstrated by comparison with similar legal reforms regarding surrogacy and anonymous birthing.

(Bio)logic at Play in Case Law

In two recent cases[6], the ECtHR ruled that the parental status of transgender parents in the birth certificate of their child (ren), did not violate the right to private life (Article 8 of the ECHR).[7] In *A.H. and Others v. Germany*[8], the German authorities refused to register a (trans) woman as the 'mother' of the child conceived with her sperm, and registered her as 'father' instead. In *O.H. and G.H. v. Germany*[9], the German courts refused to record a (trans) man as the 'father' of the child to whom he gave birth, and registered him as 'mother' instead. The Court held in both cases that the refusal to

register a transgender parent's legal forename and gender in the birth certificate of their child, did not violate the right to private life under Article 8 of the ECHR.

In *A.H. and Others*, the applicants A.H., G.H. and L.D.H. are nationals of Germany, Israel and the UK, respectively, and live in Berlin. G.H. gave birth to L.D.H., a child conceived with the sperm of A.H. The German authorities refused to record A.H. (a trans woman) in the birth register as the mother of the child to whom she did not give birth. As a result, A.H. was registered as the child's father with the names that she had been using prior to her legal gender recognition. The applicants complain that the German authorities refuse to record the first applicant as the 'mother' in the birth register of the child. Relying on Article 8 (the right to respect for private and family life) and Article 14 (the prohibition of discrimination) of the ECHR, the applicants consider that they have been discriminated against.

In *O.H. and G.H.*, the applicants O.H. and G.H. are German nationals also living in Germany. In 2013, O.H. (a trans man) got pregnant using sperm from a donor and gave birth to his son, G.H. On his son's birth certificate, O.H. asked the civil register office to put down his name as the father of the child. His request was referred to the German courts, who ordered that his name be entered as the child's mother. The appeals of the first applicant against this decision were unsuccessful. O.H. was recorded as the child's mother with the forenames that he had been using prior to his legal gender recognition. The applicants complain that the German courts refuse to allow the first applicant to be recorded as the father of his child in the birth register. The applicants, as in *A.H. and Others*, formulate their grievances under Article 8 separately and in conjunction with Article 14 of the ECHR.

Balancing Multiple Rights

In the cases described above, the German authorities had been called upon to weigh up a number of private and public interests against several apparently competing rights. As we shall argue though, the law would do better not to start from a place of positioning the rights as being in competition with each other, as this endorses (bio)logical reasoning that pits cis and trans people at odds in a zero-sum game. In contrast, we suggest working towards reproductive justice, in order to avoid the problems of balance that we highlight below.

The balancing act of rights are between the following: First, the rights of transgender parents and their partners; next, the fundamental rights and interests of the respective children, namely, their right to know their origins, their interest in a stable legal attachment to their parents, and the right to receive care and education from both parents; and lastly, the public interest, which lay in the coherence of the legal system and the accuracy and completeness of civil registration records, which had particular evidential value. Taking account of all those circumstances requires a wide margin of appreciation of the respondent State.

In light of the complexity of the issue (whether the right of the child to know their origins prevails over the right to privacy, bodily autonomy and self-determination of the transgender parent), the acknowledgement of competing rights as equally fundamental impacts on the possibility of achieving a fair equilibrium between the interests of all parties involved (Freeman & Margaria, 2012). After all, each of the competing rights (to know one's origins, to privacy, bodily autonomy and self-determination) are protected by Article 8 of the ECHR.

The main question addressed in both cases[10] was whether the framework in place and the decisions taken in relation to the applicants show that the State had fulfilled its positive obligations to ensure respect for the applicants' private life (Article 8 of the ECHR). It is worth highlighting that the right to respect for private life includes the right to self-determination, in particular the freedom to define one's gender identity.[11] It also encompasses the right to legal gender recognition, meaning that a transgender person should be protected from involuntary disclosure of that identity.[12] To the extent that the applicants in both cases also relied on the right to respect for family life, they were living together as

parents and children and their parenthood had not been called into questioned by the German authorities.

In both cases[13], the German Federal Court of Justice gave priority to the best interest of the child,[14] and considered the child's possible future interests and the interests of any children in a comparable situation to whom the legislative provisions governing the case before them would also apply. Moreover, the Federal Court of Justice had taken the view that the children's interests coincided to a certain extent with the general interest in ensuring the reliability and consistency of civil registration and legal certainty. In the past, the ECtHR had recognised that ensuring the reliability and consistency of civil registration and, more broadly, the requirement of legal certainty, were matters of public interest. In this context, entries in the civil registers had evidential value in the German legal system. The right of a child to know their origins, as emphasised by the Federal Court of Justice, was protected by the ECHR and included, in particular, the right to establish details of one's parents.

Furthermore, in the case of *O.H. and G.H.*, the Federal Court of Justice identified as underlying the child's right to be brought up by both parents, inter alia, the child's interest in being able to establish and have registered, where appropriate, the paternity of their biological father.[15] If the first applicant were to be recorded as 'father' in the register of births, the second applicant's biological father could be recorded as 'father' only on the condition that the second applicant first contested the first applicant's paternity, and this was an option which the Federal Court of Justice found unacceptable for the child. In this regard, the Federal Court of Justice argued that 'the legal attachment of a child to its parents in accordance with their reproductive functions enabled the child to be attached in a stable and unchanging manner to a mother and a father whose identity would not evolve, even in the not merely theoretical scenario where the transgender parent might seek the annulment of a gender reclassification'.[16]

Finally, according to the German legislature, the former gender and forename of transgender parents must be indicated not only in the case of a birth which had taken place before the parent's legal gender recognition, but also where, as in the cases under consideration here, the conception or birth of the child post-dated the legal gender recognition. On this, the Federal Court of Justice argued that motherhood and fatherhood, as legal categories, were 'not interchangeable' and were 'distinguished by both the preconditions for their justification and the legal consequences that followed'.[17]

In its judgement, the Court adheres to (bio)logic, not only in the case of pre-transitioned trans parents but also when the trans parent has already legally (as well as physically, thereby biologically) transitioned. According to the Court, therefore, the child's right to know one's origins as well as the public interest in legal certainty prevails over the transgender parent's right to bodily autonomy. As such, the right to privacy is violated for the sake of the right to know one's origin – a competition that cannot be quantified or balanced without making a judgement as to how much value is given to one person's life in comparison with another.

A Wide Margin of Appreciation

As there was no consensus among European States as to how to indicate in the civil registration records concerning a child that one of the persons with parental status was transgender, the Court held that States should in principle be afforded a wide margin of appreciation to deal with these issues. This lack of consensus reflected the fact that gender transition combined with parenthood raised sensitive and complex issues, interconnected and thus potentially inconsistent within the law.

According to the Federal Court of Justice, the outcomes of these balancing acts were consistent with the aims of Article 8 and also served to 'prevent the children from having to disclose their parents' transgender identity'. In so far as the applicants had asserted that the right of a child to know their origins and the interest of the public authorities in keeping track of the biological reality might be satisfied in a different manner, the Court reiterated that the choice of the means calculated to secure

compliance with Article 8 in the sphere of the relations of individuals between themselves was in principle a matter that fell within the Contracting States' margin of appreciation.

The Federal Court of Justice indicated that only a limited number of persons, who would generally be aware of the transgender status of the person concerned, were entitled to request a full copy of the birth certificate, and any other person had to show a legitimate interest in obtaining one. In addition, documents other than the full birth certificate which did not contain any indication of gender transition could be obtained instead, to prevent any risk of disclosing such information. Those precautions *could* serve to reduce the inconvenience and harm to which transgender parents might be exposed. Most likely, however, these 'safeguards' will not be sufficient to prevent the possible harm, discrimination and violence towards trans parents as their administrative and legal reality is still not in line with their social and lived reality.

It is noted that in *O.H. and G.H.*, the reference to a single transgender parent as the second applicant's father, in the absence of any mention of a mother on the birth certificate, might also raise questions as to the status of the transgender parent. Accordingly, having regard, on the one hand, to the fact that the parent-child relationship between the transgender parents and their children had not in itself been called into question and to the limited number of scenarios which could lead, when the children submitted a birth certificate, to the disclosure of the transgender identity of the parents concerned, and, on the other hand, to the wide margin of appreciation afforded to the respondent State, the courts deemed that they had struck a fair balance between the rights of the first applicant (in *O.H. and G.H.*) and those of the first and second applicants (in *A.H. and Others*), the interests of the child, and the public interest.

According to the Court, the attribution, in the birth register, of the role of mother to the person who gave birth to the child falls within the margin of appreciation of the State. Thus, the decision to treat the first applicant in *A.H. and Others* in the same way as any person who contributed to the conception of a child by providing male gametes, namely, to allow her to officially retain her biological link with this applicant by acknowledging her paternity, also fell within the State's margin of appreciation. The same conclusions applied to the second and third applicants. In *O.H. and G.H.*, the situation of the first applicant was not comparable to that of a father who had contributed male gametes to the reproduction. Thus, he was considered to be the child's 'mother'. Finally, the situation of the second applicant, namely, the child, was not considered to comparable to that of children who had been adopted by homosexual couples or by a single male parent. This too fell within the margin of appreciation of the respondent state.

Considering the sensitive and complex subject of these cases, it comes as no surprise that the Court refers to the wide margin of appreciation of the respondent states. Still, the choices made by the State, within the limits of that margin of appreciation, are not beyond the Court's control. The Court has a duty to examine carefully the facts considered and arguments made in arriving at the solution adopted by the State, and to determine whether a fair balance has been struck between the interests of the State and those of the individuals directly affected by that solution. It must also consider the essential principle that, whenever the situation of a child is at issue, the child's best interests must take precedence. However, positioning the child's best interests at odds with those of trans parents requires argumentation, which we shall show tends to endorse (bio)logical reasoning and transphobic tropes to attempt to justify good for the child at the trans parents expense.

The (Bio)logic of 'Reality Enforcement'

When giving precedence to 'the child's best interests', it is questionable whether it is indeed in the best interest of the child to 'know their origins', if by 'origins' it is meant that the *former* name and gender identity of their transgender parent(s) are revealed on their birth certificate. As previously argued, this creates a conflict of interest between the rights and interests of the child and the right to privacy,

including the right to self-determination of their trans parent. Moreover, it is questionable whether the right to know their origins, in particular to 'have a stable legal attachment to their parent(s)', is even achieved by attributing a legal status to the relationship based upon (bio)logic (of biological gestation or sperm contribution), rather than recognising the lived and legal gender of the trans parent.

The (bio)logical reasoning here prioritises 'nature' over 'nurture', relegating (trans) gender outside of nature and into the unreal, thereby limiting origins to the gestative (or not) role played in reproduction. In reducing what qualifies as contributing to ones 'origins', biology is taken to be the only guiding source to reality, and the only basis for stable legal attachment. This makes large philosophical assumptions regarding what 'origins' encompass (in both a descriptive and prescriptive sense), and it is also presumed that 'outing' a parent serves the child more than affirming their lived familial relationship with that parent in question.

This (mis)treatment of trans parents manifests what Bettcher describes as a 'reality enforcement' (Bettcher, 2014, p. 392) whereby the reality of the sexed reproductive body is enforced over and above gender to reveal the 'true' self. This is a form of transphobia: 'Fundamental to transphobic representations of transpeople as deceivers is an appearance-reality contrast between gender presentation and sexed body'. (Bettcher, 2007, p. 48, citing Serano, 2007). When the supposed 'origins' of a child are not aligned with gender presentation and trans identity of the parent, that parent is implicitly accused of deceiving their child, whereas the birth certificate reveals the truth of parentage. For Bettcher, this 'reality' is enforced by the invasive demand to disclose private bodily information (whether that be on a child's birth certificate or otherwise), which is inherently bound up with and consistent with a form of sexual abuse (Bettcher, 2006, pp. 205–6). As such, 'it behooves non-trans feminists to question the political value of deploying such representations' (Bettcher, 2020) which are perpetuated through the deployment of (bio)logical understandings of 'origins'.

In the cases described above, the 'reality enforcement' manifests in the Court's attempts to determine the 'true' nature of transgender parents, whereby the terms 'mother' and 'father' are taken to relate solely to the biological processes involved. The argument that the birth-giver must be identified in birth certificates as 'the mother' in order to 'maintain a coherent and reliable birth registration system' leaves transgender parents in a dual situation where they are legally recognised in documents concerning themselves but legally mis-gendered on the birth certificate of their child (ren). This is hardly 'maintaining coherence' but rather creates inconsistencies within the legal framework. The (bio)logic employed by Germany, the respondent State, as well as most other European states and the ECtHR, leads to the situation whereby one-and-the-same person is legally registered in conflicting ways in different documents (one, i.e. accurate, and one that uses (bio)logic, i.e. inaccurate).

The consequences of Court rulings are far-reaching, and have the potential to undermine the rights and well-being of transgender individuals, and as such must be resisted and critiqued. Not only are these decisions legally and (bio)logically flawed, they could also set a dangerous precedent, making them consequentially morally flawed too. Such outcomes effectively perpetuate an idea that the law has the right to dictate someone's identity, rather than reflect it. They disregard the real and damaging effects of misgendering, and ignore the inherent dignity and worth of transgender individuals. The use of such (bio)logic sends a message that trans identities aren't 'real' or important enough to be accurately mirrored in important legal documents. It's a missed opportunity to set a positive example and demonstrate that society values diversity and acceptance, and instead reinforces the discrimination and stigma that transgender people already face, where legal recognition of their parenthood may have helped to alleviate the stigma that 'reality enforcement' otherwise imposes.

Therefore, we argue against the use of these (bio)logical arguments, as they are not valid in the context of a person who plans to, is in the process of, or has already undergone gender transition and the (subsequent) legal gender recognition thereof. The (bio)logic buys into a transphobic and abusive 'reality enforcement' that ought to be rejected. Instead we shall look to legal reforms in the areas of

surrogacy and anonymous birthing before moving to more direct positive legal alternatives that make headway towards the aims of reproductive justice.

Comparison With Surrogate Arrangements

Contrasting with surrogacy, or rather using surrogacy as an analogy, is interesting for many reasons, not least since many trans pregnant men and nonbinary persons describe themselves as being their own surrogate. In a study conducted by Ellis et al., participants said: 'I was my own surrogate'; 'I'm serving 2 roles. I'm going to be their father, but I'm also being my own surrogate so I'm… the birth mother at the same time'; 'I just say that we had a surrogate… In a lot of ways, it was true because I was my own surrogate' (Ellis et al., 2015).

English and Welsh law provide a useful framework to draw this comparison, since the United Kingdom was the first country to regulate and legislate in favour of the transfer of legal parenthood in the Surrogacy Arrangements Act (SAA) and the Human Fertilisation and Embryology Act (HFEA). Being the first of its kind in the world, the SAA and HFEA help us understand how surrogacy is understood not only in the United Kingdom but also globally, by setting an example that many other jurisdictions built from.

Surrogacy implies three physically and legally distinct parents: (i) genetic; (ii) gestational; and (iii) social. In a surrogate arrangement in English and Welsh law, the gestational parent is to be considered the legal mother until a parental order has been issued to the intended parents for social parenthood after birth. This (bio)logical reasoning which tracks motherhood via gestation is written into the HFEA: 'The woman who is carrying or has carried a child as a result of the placing in her of an embryo or of sperm and eggs, and no other woman, is to be treated as the mother of the child'.[18] Section 54 of the HFEA details the conditions for transferring parental status from surrogate to intended parents after birth.[19]

Legally speaking (at least in English and Welsh law), the trans man who gives birth to his child needs to go through a process of applying for a parental order to certify him as 'father' where he was otherwise the 'mother' by virtue of giving birth to the child. The trans pregnant person thereby goes from gestating their child like a surrogate to adopting their child like an intended parent.

But being a 'surrogate mother' misrepresents both the surrogate and the trans pregnant person. As Horsey notes: 'the law singularly fails to reflect … lived experience: the view of surrogates that they are not mothers' (Horsey, 2016). Likewise, the law fails to reflect the view of pregnant trans and nonbinary people that they are not mothers.[20] Since there is no intention of surrogate or pregnant trans or nonbinary persons to be a mother, one could look to legal reforms that base motherhood on intention rather than gestation.

As Mahmoud and Romanis (and Mahmoud, 2022; Horsey, 2003; Horsey, 2010; Horsey & Jackson, 2022) have argued: 'Intention-based parenthood recognises legal parental rights based on the relational role played to the child, rather than on biology. This approach is consistent with the need to legally recognise a person's status as parent ab initio; namely, responsibility for the child and their welfare' (Mahmoud & Romanis, 2023, p. 136, citing Bainham, 1999). Rather than following (bio) logical reasons, one could follow intended social responsibility to inform the registration of a child's parents.

Intention-based models could assign parenthood in much the same way as the HFEA assigns parenthood using consent forms for intended parents.[21] As Mahmoud and Romanis note, this would be a 'huge reform to a fundamental principle of English la' that has been 'suggested for some time and no action has resulted' (Mahmoud & Romanis, 2023, p. 138, citing Horsey, 2003, 2010; Horsey & Jackson, 2022). But given that consent forms are already in place, they could be co-opted for the purposes of registering trans parents correctly until a larger reform of intended parenthood is established.

In the meantime, Mahmoud and Romanis note 'smaller reforms' which take steps in the same direction, such as 'allowing gestators/legal mothers to abdicate parental responsibility earlier than six

weeks post-birth, recognising their intentions not to parent, such as in surrogacy'.[22] This could be amended such that it allows gestators to abdicate 'motherhood', as in trans pregnancies, whereby the intention is not to become a 'mother' but rather some other gendered parental role such as 'father'.[23] We now turn to examples of 'abdication' – specifically, anonymous birthing – by way of comparison.

Comparison With Anonymous Birthing

As highlighted by others, abdicating motherhood is a gendered issue[24]: voluntary relinquishment is seen as 'unwomanly' (O'Donovan, 2002; O'Donovan & Marshall, 2006), an act of self-betrayal, a woman divided against herself who ought to behave differently, namely, more 'authentically' in keeping with their identity, which is inextricably linked to being pregnant (Marshall, 2008). The starting assumption legally is that the best person to bring up a child is, in judicial words, 'the natural parent', where who qualifies as the 'natural' parent quite explicitly follows (bio)logical reasoning and 'reality enforcement', that is, the 'mother'.[25]

Freeman and Margaria ask: 'Can a woman, who is uncontroversially the gestational mother, renounce her maternity'? (Freeman & Margaria, 2012, p. 154). We can rephrase the question – can the birth-giver renounce maternity in favour of another parental role? Is it appropriate to describe it as 'renouncing' when the trans birth-giver may not consider themselves as having any maternity to renounce? Legally speaking, in English and Welsh law, 'motherhood' is automatically imposed on the birth-giver and thereby it requires renouncing if it is not intended. But since a person who gives birth cannot oppose the registration of their name on the birth certificate as 'mother',[26] they thereby cannot refuse legal motherhood,[27] and as Freeman and Margaria clarify: 'in England the only avenue open to a pregnant woman who does not wish to become a mother is to terminate her pregnancy' (Freeman & Margaria, 2012, p. 157). That is a hefty price to pay for (bio)logic. So what avenues are there open to a pregnant person who does not wish to become a mother, for example, if they want to become a father or a nonbinary parent after having given birth to their child?

In France, people have the choice to give birth anonymously and thus not become legal mothers. This is principally associated with the French Institution of 'accouchement sous X'[28] which is a right protected by the Civil Code.[29] It has existed since the French Revolution but was only legally recognised in 1941 by a decree of the Vichy government.[30] In practice, what it means is that a person has the right to ask that their admittance to hospital and their giving birth remain a secret, whereby their identity is registered on the birth certificate as 'X'. This has similarities to an intention-based model, where parenting is a choice and those who give birth are not obliged to have a particular parental role against their will. This thus does not follow the (bio)logical argument that gestating automatically brings intention to become a mother, and it creates conceptual and legal space between giving birth and motherhood.[31]

Here again we see that there is a conflict between the person's right to give birth anonymously and the child's right to know their origins, in particular the right to knowledge of their 'mother'. In Italy and Luxembourg, a child who was born anonymously, was allowed to institute proceedings to establish a legal tie with their 'mother'. However, the action to establish a legal bond can only be instituted when a child born anonymously is not adopted, which is exceptional, as most such children are adopted (Freeman & Margaria, 2012, p. 156). Thus, the actual consequences thereof might be limited.

In Belgium, anonymous birthing is neither allowed, nor rejected. Belgian legislation recognises a right to give birth 'discretely', whereby the birth-giver has two months after childbirth to decide whether they wish to preserve anonymity or not. The child has the chance to request access to their birth records later in time, and if the birth-giver still does not allow the removal of anonymity, the child has the right to appeal and a mediator is responsible for clarifying the interest of the child to know their origins.[32] This was a result of a 'typical Belgian compromise', as pregnant Belgian people were giving birth in France anonymously under the regime of '*accouchement sous X*' (Freeman & Margaria, 2012, p. 157).

What we have described as (bio)logic, Freeman and Margaria cite Lefaucheur as naming the 'biologization of society' (Freeman & Margaria, 2012, p. 167). Lefaucheur (2004) defends anonymous birth as a way of overcoming this biologisation, which too would be a way of resisting (bio) logical reasoning that only places relevance on biological gestation. Likewise, Dagognet supports the recognition of the right to accouchement sous X on the basis that the existence of the family must not be rooted in blood connections,[33] and Legendre argues that humanity should be regarded as a product of 'history', 'speech' and 'institutionalisation' rather than nature and biology (Lefaucheur, 2004, quoting Pierre Legendre). O'Donovan is a principal advocate of introducing accouchement sous X into English law for similar reasons (O'Donovan, 1988, 1989).

With such an introduction, we take a step in distancing from (bio)logic, and pregnant trans and nonbinary persons, as well as pregnant cis women, would be able to give birth without automatic association of motherhood. But what good is 'X' to the trans parent who wants to be recognised as 'father' or a nonbinary 'parent'? Attributing correct specific roles is deemed necessary because 'legal parenthood is "a question of most fundamental gravity and importance"'.[34] Anonymous birth may be a step in the right direction, but it does not go far enough. Rather than anonymity, then, what is required for reproductive justice for trans individuals is positive affirmation.

So whilst anonymous birthing may provide a route out of motherhood, it does not provide positive affirmation for trans parents gestating as a way into fatherhood (or other parenthood). Social reality appears richer than legal reality which fails to refer to it accurately. As Mahmoud and Romanis argue: 'Currently, legal motherhood fails to reflect the diversity of family formation, for example, where the gestating person does not intend to mother after birth, such as surrogacy and adoption' (Mahmoud & Romanis, 2023, p. 119, citing Horsey, 2016; D'Alton Harris, 2014; Horsey & Sheldon, 2012). Legal motherhood also fails to reflect the gestating man or nonbinary person who does not intend to mother after birth, but rather to father or parent after birth. To accommodate trans family formations we need to look further afield than mimicking and twisting legal regulations around surrogacy and anonymous birthing.

Positive Legal Alternatives

A wider cross-comparison within the European context provides a broader picture, and some inspiration, for how the situation could be reasonably improved for the purposes of reproductive justice for trans families. We use the Council of Europe as the frame of reference for these comparisons, since all member states are subjected to the jurisprudence of the ECtHR. So, whilst we acknowledge that the United Kingdom is no longer a member of the European Union, this does not impact on its membership of the Council of Europe and thereby its appropriateness for comparison within the European context.

A particular case against the United Kingdom is of importance, namely, *Christine Goodwin v. United Kingdom* (2002), where the Court remarked that although the legal changes envisaged with respect to legal gender recognition had significant 'repercussions' in terms of birth registration, access to records, family law, affiliation, inheritance, criminal justice, employment, social security and insurance, these were 'far from insuperable'.[35] Moreover, the Court stated that 'society may reasonably be expected to tolerate a certain inconvenience to enable individuals to live in dignity and worth in accordance with the sexual identity chosen by them at great personal cost'.[36]

In *Hämäläinen v. Finland* (2014) the Court restated the same principle as follows: 'states are required, in accordance with their positive obligation under Article 8, to recognize the change of gender undergone by 'post-operative transsexuals' through, inter alia, the possibility to amend the data relating to their civil status, and the ensuing consequences'.[37] So, it is possible for the Court to make records consistent – not only internally consistent with each other, but also by being externally consistent with lived reality which isn't deemed in contravention of (bio)logical 'reality enforcement'.

Another case regarding the implications of gender reassignment for families is *X, Y and Z. v. United Kingdom* (1997). The applicant, a transgender man, complained about the authorities' refusal to register him as father to his long-standing partner's child born by artificial insemination by donor. In this case, the court refused to find that the failure of UK law to recognise him as the father of a donor insemination child, born to his partner and brought up as their child, was a breach of their rights to respect for their family life under Article 8. According to the Court, the de facto ties linking X, Y and Z were sufficient to establish family life between them, so there was no infringement.[38] Nonetheless, the Court has held in the past that 'where the existence of a family tie with a child has been established, the State must act in a manner calculated to enable that tie to be developed and legal safeguards must be established that render possible, from the moment of birth or as soon as practicable thereafter, the child's integration in his family'.[39]

In Sweden, a new law of 1 January 2019 recognises trans people who are parents according to their legally recognised gender identity in their child's documents.[40] Trans men who give birth are designated as 'father' and trans women who beget a child as 'mother'.[41] The Swedish law is a first in Europe to implement the demand from the Parliamentary Assembly of the Council of Europe to document trans parents according to their gender identity,[42] and other countries, such as Iceland and Denmark, have since introduced similar legislation.

A progressive model is needed to guide us in the right direction for more inclusive law regarding trans parenthood. One such model is suggested by the Yogyakarta Principles (Article 24: the right to found a family, regardless of sexual orientation or gender identity), as well as the Yogyakarta Principles +10 (Article 24 (I): States shall issue birth certificates for children upon birth that reflect the self-defined gender identity of the parents). These Principles aim to apply human rights in relation to sexual orientation and gender identity, and have gained significant attention from states, UN actors, and civil society, thereby having the potential to influence advocacy efforts and normative development (O'Flaherty & Fisher, 2008). Their rapid assimilation into policymaking is attributed to modest demands, stable foundations and strategic framing by activists (Thoreson, 2009). Despite not being legally enforceable, they do affirm binding international legal standards to be complied with by all states and have played a crucial role in advancing the recognition of sexual minorities as a protected group within the human rights framework (Thoreson, 2009).

This is illustrated by a recent resolution adopted by the Council of Europe and a report issued by the Human Rights Council of the United Nations which call for similar change. On October 10, 2018, the Parliamentary Assembly of the Council of Europe adopted Resolution 2239 (2018) entitled 'Private and family life: achieving equality regardless of sexual orientation'. This resolution calls on all member states of the Council of Europe to ensure that the gender identity of transgender parents is properly recorded on their children's birth certificates (point 4.6). And the Report of the Special Rapporteur[43] on the right to privacy of March 24, 2020 requires that all member states of the United Nations should issue birth certificates that indicate the gender identity in which the parents recognise themselves. Given the overlap of member states of the Council of Europe and the United Nations, we take this as a strong indication of a way forward that is implementable across the European context.

It is important to note that not only trans parents, but also same-sex parents, single parents and intersex persons would benefit from these changes, as well as a general benefit for all in breaking with (bio)logic. If the law is to continue using gendered language, it should adopt the terms used by trans people (Dunne, 2015; Imrie et al., 2020) rather than imposing and thereby misgendering its subjects.

Conclusion

In 2017, the European Court of Human Rights clarified that making legal gender recognition conditional upon compulsory sterilisation surgery or treatments likely to cause sterility breaches Article 8 of the Convention. As a consequence, the Court opened the possibility for trans persons to

become biological parents, enabling the physiological capacity for trans men to give birth (and therefore be 'fathers') and for trans women to contribute semen to the process of conception (and be 'mothers'). Nevertheless, it is clear that the Court continues to endorse only one 'right' way to be a 'family' and 'parent' in its case law regarding trans parents. The 'traditional' family is presented as the optimal structure, as manifested in the need to ensure 'coherency and certainty' of the birth registration system, and alternative legal requirements for anonymous birthing and surrogate arrangements that reinforce the normative family structure. The subtle but imposed need by law and society for coherency and certainty undermines families outside the 'traditional' ideal. Consequently, trans families struggle to be validated within frameworks heavily dominated by cis-heteronormativity which is underpinned by (bio)logic and 'reality enforcement'. Unfortunately, this will continue until conceptual and legal understandings of 'family' expand or until 'family' as we know it is abolished entirely (Lewis, 2019).[44]

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Notes

1. 'Transition' is understood as 'a process whereby an individual transitions to living in their preferred gender'. See TGEU, 'Transition', *Glossary*, https://tgeu.org/glossary/ (Accessed January 2024).
2. ECHR, *A.P., Garçon and Nicot v. France* (no. 52596/13), 24 July 2015.
3. This play-on-words has been used in a different way elsewhere by Willingham (2020) regarding fallacious interpretations of the phallus. Here the similarities in the sound of the words is to highlight the patriarchal aspects of (bio)logical reasoning. Of course, we do not intend to be making any claims about the symbol of the phallus in psychoanalysis, but rather we are using language of the genitalia to mock the (bio)logic which so often is androcentric.
4. Those harms include triggering existing mental health challenges, highlighted in the literature review conducted by Besse et al. (2020), who cite Armuand et al. (2017).
5. See Finn (2024) for an analysis of this conflation.
6. ECtHR, *A.H. and Others v. Germany* (no. 7246/20), April 4, 2023; *O.H. and G.H. v. Germany* (nos. 53568/18 and 54741/18), April 4, 2023.
7. See also *X, Y and Z v. the United Kingdom*, 21830/93, 22 April 1997; *Hämäläinen v. Finland* [GC], 37359/09, 16 July 2014; *Mandet v. France*, 30955/12, 14 January 2016; *A.P., Garçon and Nicot v. France*, 79885/12 et al., 6 April 2017; *Valdís Fjölnisdóttir and Others v. Iceland*, 71552/17, 18 May 2021; *Y. v. Poland*, 74131/14, 17 February 2022.
8. ECtHR, *A.H. and Others v. Germany* (no. 7246/20), April 4, 2023.
9. ECtHR, *O.H. and G.H. v. Germany* (nos. 53568/18 and 54741/18), April 4, 2023.
10. Federal Court of Justice (*Bundesgerichtshof*), XII ZB 459/16, 29 November 2017; Federal Court of Justice (*Bundesgerichtshof*), XII ZB 660/14, 6 September 2017.
11. ECtHR, *Guide on Article 8 of the European Convention on Human Rights - Right to respect for private and family life*, 31 August 2022, p. 71/172. See also *Guide on the case-law of the European Convention on Human Rights - Rights of LGBTI persons*, 31 August 2022, p. 22/50.

12. Ibid.
13. Federal Court of Justice (*Bundesgerichtshof*), XII ZB 459/16, 29 November 2017; Federal Court of Justice (*Bundesgerichtshof*), XII ZB 660/14, 6 September 2017.
14. Article 3 UN Convention on the Rights of the Child (UNCRC). See also, Committee on the Rights of the Child, 'General Comment No. 14: The Right of the Child to Have his or her Best Interests Taken as a Primary Consideration' UN Doc CRC/C/GC/14 (29 May 2013).
15. Federal Court of Justice (*Bundesgerichtshof*), XII ZB 660/14, 6 September 2017.
16. Ibid.
17. Ibid., 27(1): '*Eine von den biologischen Fortpflanzungsfunktionen abweichende statusrechtliche Zuordnung hätte für die Kohärenz der Rechtsordnung weitreichende Folgen, weil Mutterschaft und Vaterschaft als rechtliche Kategorien untereinander nicht beliebig austauschbar sind, sondern sich sowohl hinsichtlich der Voraussetzungen ihrer Begründung als auch hinsichtlich der daran anknüpfenden Rechtsfolgen voneinander unterscheiden*'.
18. Human Fertilisation and Embryology Act (2008) Chapter 22, Part 2, section 33 p37.
19. See Finn (2018) for an analysis of this understanding of the surrogate 'mother'.
20. In *R (McConnell and YY) v Registrar General for England and Wales* [2020] EWCA Civ 559, the Court of Appeal held the Registrar General was correct to register a trans man, who had given birth after the issuing of his gender recognition certificate, as 'mother' on his son's birth certificate. In their judgement, the court rejected the appellants' contention that the Gender Recognition Act 2004 should be construed to allow registration as either 'father' or 'parent'. The court further held that the interference with the appellants' Article 8 rights which resulted from the registration as 'mother' was proportionate and justified. See Brown (2021).
21. Human Fertilisation and Embryology Authority, Code of Practice (ninth end, rev July 2022).
22. Law Commission, Building Families Through Surrogacy: A New Law (Law Com No 244, 2019) at 8.27ff.
23. The wishes of trans parents are individual: not everyone wishes to be recognised as 'mother' or 'father'; some would, for example, prefer a gender-neutral recognition such as 'parent'.
24. See Finn et al. (2024) for further analysis of this ideology of motherhood.
25. Re KD A Minor Access Principles 1988 2 FLR 139 per Lord Templeman at para 141.
26. See Births and Deaths Registration Act, 1953, 1 & 2 Eliz. 2, c. 20 (Eng.).
27. See Births and Deaths Registration Act, 1953, 1 & 2 Eliz. 2, c. 20, § 10(1) (a) (Eng.).
28. Jacqueline Rubellin-Devichi, Droits de la mère et Droits de l'enfant: Rélexions sur les formes de l'abandon, 90 rev. trim. dr. civ. 695 (1991) (Fr.).
29. See code civil [c. civ.] art. 341-1 (Fr.) ('At the time of her delivery a mother may demand that the secret of her admission and of her identity be preserved').
30. See Legislative Decree, 2 September 1941; Lefaucheur (2004).
31. See 4 Juillet 2001 Loi n° 2001-588 relative à l'Interruption Volontaire de Grossesse et à la contraception [Law 2001-588 of July 4, 2001 related to the Voluntary Termination of Pregnancy and Contraception] confers a right to abortion for twelve weeks.
32. See *Le droit de savoir d'ou je viens: Problematique de l'accouchement sous X*, Institut Europeen de Bioethique (Aug 1, 2017).
33. See François Dagognet (Nov. 13, 1999) 'L'institutrice et l'enfant perdu', libération, https://www.liberation.fr/tribune/0101299776-l-institutrice-et-l-enfant-perdu (quoted in Lefaucheur, 2004).
34. Re HFEA (Cases A, B, C, D, E, F and G) [2015] EWHC 2602 Fam [3].
35. *Christine Goodwin v. United Kingdom* (2002), §91. According to the Court, 'any "spectral difficulties," particularly in the field of family law, are both manageable and acceptable [if confined to the case of fully achieved and post-operative transsexuals]'. Although this case is most certainly a step forward, it is still extremely transphobic in terms of accepting only those transgender persons that transition 'fully' (medically).
36. *Christine Goodwin v. United Kingdom* (2002), §91.

37. *Hämäläinen v. Finland* (2014), §68. See also Christine Goodwin, n47, §§ 71-93, and *Grant v. the United Kingdom*, no. 32570/03, §§ 39-44).
38. *X, Y and Z v. the United Kingdom* (22 April 1997), no. 21830/93. In this case, the applicants' do not complain that UK law does not provide for the recognition of the trans person's gender identity, but rather that it is not possible for such a person to be registered as the father of a child (§42). So far, the Court only considered 'family ties between biological parents and their offspring'. This case is different, 'since Z was conceived by AID and is not related, in the biological sense, to X, who is a transsexual' (§43). Because of this reason, UK law did not allow for legal recognition of the relationship between X and Z. The Court however held that the absence of this legal connection is no violation of the right to family life (Article 8), given that 'X is not prevented in any way from acting as Z's father in the social sense (e.g. he lives with her, provides emotional and financial support to her and Y, and he is free to describe himself to her and others as her "father" and to give her his surname) and, together with Y, he could apply for a joint residence order in respect of Z, which would automatically confer on them full parental responsibility for her in English law (§25–27)'.
39. *Ibid*., §43. See also Marckx, p. 15, para. 31; *Johnston and Others v. Ireland*, p. 29, para. 72; Keegan, p. 19, para. 50; and *Kroon v. Others*, p. 56, para. 32.
40. Act on Amendment of the Children and Parents Code [lag om ändring i föräldrabalken] (Svensk författningssamling [SFS] 2018:1279) (Swed.). See also Alaattinoğlu and Margaria (2023).
41. See Lög 49/2021 um breytingu á barnalögum (kynrænt sjálfræði) [Act 49/2021 Amending the Children's Act (gender autonomy)] (Ice.); Lov nr 227 af 15.2.2022 om ændring af børneloven, navneloven og forskellige andre love [Act no. 227 of Feb. 15, 2022 on Amendment of the Children's Act, the Name Act and Several Other Acts] (Den.).
42. See PACE Resolution 2239 (2018) 'Private and family life: achieving equality regardless of sexual orientation'.
43. 43rd session of the Human Rights Council, A/HRC/43/52.
44. This paper is dedicated to the memory of Demi, who unfortunately didn't get the chance to live in accordance with her gender identity – and to all others struggling to navigate their relationships with their genders and the laws that bind them.

References

Alaattinoğlu, D., & Margaria, A. (2023). Trans parents and the gendered law: Critical reflections on the Swedish regulation. *International Journal of Constitutional Law*, *21*(2), 603–624. https://doi.org/10.1093/icon/moad056

Armuand, G., Dhejne, C., Olofsson, J. I., & Rodriguez-Wallberg, K. A. (2017). Transgender men's experiences of fertility preservation: A qualitative study. *Human Reproduction*, *32*(2), 383–390. https://doi.org/10.1093/humrep/dew323

Bainham, A. (1999). Parentage, parenthood and parental responsibility: Subtle, elusive yet important distinctions. In S. Gilmore (Ed.), *What is a parent? A socio-legal analysis*. Hart Publishing.

Besse, M., Lampe, N. M., & Mann, E. S. (2020). Experiences with achieving pregnancy and giving birth among transgender men: A narrative literature review. *Yale Journal of Biology & Medicine*, *93*(4), 517–528.

Bettcher, T. M. (2006). Understanding transphobia: Authenticity and sexual abuse. In K. Scott-Dixon (Ed.), *Trans/Forming feminisms: Transfeminist voices speak out* (pp. 203–210). Sumach Press.

Bettcher, T. M. (2007). Evil deceivers and make-believers: On transphobic violence and the politics of illusion. *Hypatia: A Journal of Feminist Philosophy*, *22*(3), 43–65. https://doi.org/10.1111/j.1527-2001.2007.tb01090.x

Bettcher, T. M. (2014). Trapped in the wrong theory: Re-thinking trans oppression and resistance. *Signs: Journal of Women in Culture and Society*, *39*(2), 383–406. https://doi.org/10.1086/673088

Bettcher, T. M. (2020). In E. N. Zalta (Ed.), *Feminist perspectives on trans issues. The stanford encyclopedia of philosophy*. Available at: https://plato.stanford.edu/archives/fall2020/entries/feminism-trans/> (Accessed June 2024).

Brown, A. (2021). Trans parenthood and the meaning of 'mother', 'father' and 'parent'-R (McConnell and YY) v registrar general for England and Wales [2020] EWCA civ 559. *Medical Law Review*, *29*(1), 157–171. https://doi.org/10.1093/medlaw/fwaa036

Carone, N., Bos, H. M. W., Shenkman, G., & Tasker, F. (Eds.), (2021). *Editorial: LGBTQ Parents and Their Children During the Family Life Cycle* (*12*). Frontiers in Psychology.

D'alton-Harrison, R. (2014). Mater semper incertus est: Who's your mummy? *Medical Law Review*, *22*(3), 357–383. https://doi.org/10.1093/medlaw/fwt047

Dunne, P. (2015). Recognizing trans parenthood on birth certificates: Re (JK) v secretary of state for the home department. *International Family Law Journal*, *3*(1), 230.

Dunne, P. (2017). Transgender sterilisation requirements in Europe. *Medical Law Review*, *25*(4), 554–581. https://doi.org/10.1093/medlaw/fwx028

Ellis, S. A., Wojnar, D. M., & Pettinato, M. (2015). Conception, pregnancy, and birth experiences of male and gender variant gestational parents: it's how we could have a family. *Journal of Midwifery & Women's Health*, *60*(1), 62–69. https://doi.org/10.1111/jmwh.12213

Finn, S. (2018). The metaphysics of surrogacy. In D. Boonin (Ed.), *The palgrave handbook of philosophy and public policy* (pp. 649–659). Palgrave Macmillan, Springer International Publishing AG.

Finn, S. (2024). De-Sexing and de-gendering motherhood. *Thinking*, *23*(68), 6.

Finn, S., Marshall, J., Pathe-Smith, A., & Adkins, V. (2024). Pregnancy: Transformations in philosophy and legal practice. In G. A. Bruno & J. Vlasits (Eds.), *Rewriting the history of philosophy*. Routledge. chapter 22.

Freeman, M., & Margaria, A. (2012). Who and what is a mother? Maternity, responsibility and liberty. *Theoretical Inquiries in Law*, *13*(1), 153–178.

Gates, G. (2013). *LGBT parenting in the United States*. Williams Institute.

Horsey, K. (2003). *Legally recognising intention: Parenthood in surrogacy and assisted conception*. University of Kent. PhD thesis.

Horsey, K. (2010). Challenging presumptions: Legal parenthood and surrogacy arrangements. *Child and Family Law Quarterly*, *4*(22), 449–474.

Horsey, K. (2016). Fraying at the edges: UK surrogacy law in 2015. *Medical Law Review*, *24*(4), 608–621. https://doi.org/10.1093/medlaw/fww013

Horsey, K., & Jackson, E. (2022). Discrimination and reform of the human fertilisation and Embryology act 1990? *The Modern Law Review*, *2*(1), 1–17.

Horsey, K., & Sheldon, S. (2012). Still hazy after all these years: The law regulating surrogacy. *Medical Law Review*, *20*(1), 67–89. https://doi.org/10.1093/medlaw/fwr039

Imrie, S., Zadeh, S., Wylie, K., & Golombok, S. (2020). Children with trans parents, parent-child relationship quality and psychological well-being. *Parenting, Science, and Practice*, *21*(3), 185–215. https://doi.org/10.1080/15295192.2020.1792194

Julia Kapusta, S. (2016). Misgendering and its moral contestability. *Hypatia*, *31*(3), 502–519. https://doi.org/10.1111/hypa.12259

Lefaucheur, N. (2004). The French "tradition" of anonymous birth: The lines of argument. *International Journal of Law, Policy and the Family*, *18*(3), 319–342. https://doi.org/10.1093/lawfam/18.3.319

Lewis, S. (2019). *Abolish the family: A manifesto for care and liberation*. Verso Books.

Mahmoud, Z. (2022). *Surrogates across the atlantic: Comparing the impact of legal and health regulatory frameworks on surrogates' autonomy, health, and wellbeing*. University of Exeter.

Mahmoud, Z., & Romanis, E. C. (2023). On gestation and motherhood. *Medical Law Review*, *31*(1), 109–140. https://doi.org/10.1093/medlaw/fwac030

Margaria, A. (2020). Trans men giving birth and reflections on fatherhood: What to expect? *International Journal of Law, Policy and the Family*, *34*(3), 225–246. https://doi.org/10.1093/lawfam/ebaa007

Marshall, J. (2008). Giving birth but refusing motherhood: Inauthentic choice or self-determining identity? *International Journal of Law in Context*, *4*(2), 169–185. https://doi.org/10.1017/s174455230800205x

McGlynn, C. (2006). *Families and the European union: Law, policy and pluralism*: Cambridge University Press.

More, S. D. (1998). The pregnant man—an oxymoron? *Journal of Gender Studies*, *7*(3), 319–328. https://doi.org/10.1080/09589236.1998.9960725

O'Donovan, K. (1988). A right to know one's parentage? *International Journal of Law, Policy and the Family*, *2*(1), 27–45. https://doi.org/10.1093/lawfam/2.1.27

O'Donovan, K. (1989). What shall we tell the children? In R. Lee & D. Morgan (Eds.), *Birthrights: Law and ethics at the beginnings of life*. Routledge.

O'Donovan, K. (2002). "Real" mothers for abandoned children. *Law & Society Review*, *36*(2), 347–378. https://doi.org/10.2307/1512180

O'Donovan, K., & Marshall, J. (2006). After birth: Decisions about becoming a mother. In A. Diduck & K. O'Donovan (Eds.), *Feminist perspectives on family law*. Routledge-Cavendish.

Offer, S., & Schneider, B. (2011). Revisiting the gender gap in time-use patterns: Multitasking and well-being among mothers and fathers in dual-earner families. *American Sociological Review*, *76*(6), 809–833. https://doi.org/10.1177/0003122411425170

O'Flaherty, M., & Fisher, J. (2008). Sexual orientation, gender identity and international human rights law: Contextualising the Yogyakarta principles. *Human Rights Law Review*, *8*(2), 207–248. https://doi.org/10.1093/hrlr/ngn009

Pyne, J. (2012). *Transforming family: Trans parents and their struggles, strategies, and strengths*. LGBTQ Parenting Network, Sherbourne Health Clinic.

Ryan, M. (2009). Beyond thomas beatie: Trans men and the new parenthood. In R. Epstein (Ed.), *Who's my daddy?* Sumach Press.

Sayer, L. C. (2005). Gender, time and inequality: Trends in women's and men's paid work, unpaid work and free time. *Social Forces*, *84*(1), 285–303. https://doi.org/10.1353/sof.2005.0126

Serano, J. (2007). *Whipping girl: A transsexual woman on sexism and the scapegoating of femininity* (2nd ed.). Seal Press.

Thoreson, R. R. (2009). Queering human rights: The Yogyakarta principles and the norm that dare not speak its name. *Journal of Human Rights*, *8*(4), 323–339. https://doi.org/10.1080/14754830903324746

Wierckx, K., Van Caenegem, E., Pennings, G., Elaut, E., Dedecker, D., Van de Peer, F., Weyers, S., De Sutter, P., & T'Sjoen, G. (2012). Reproductive wish in transsexual men. *Human Reproduction*, *27*(2), 483–487. https://doi.org/10.1093/humrep/der406

Willingham, E. (2020). *Phallacy: Life lessons from the animal penis*. Avery Press.

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